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ABATEMENT.

1. An action by a parent for damages for the loss of his son, who was killed by the negligence of the defendant, a common carrier, does not abate by the death of the plaintiff, but survives to his personal representatives; but the *actual* damages from the loss of the son's services alone survive. *James* v. *Christy*, 162.
2. The action of forcible entry and detainer does not abate by the death of one of the plaintiffs. *Carlisle & Keyser* v. *Rawlings*, 166.
3. The illegal manner of summoning a grand jury is no ground for a plea in abatement to an indictment, nor would it, under our statute, be any ground for a challenge to the array. *The State* v. *Bleckley*, 428.

ACKNOWLEDGMENT.

See CONVEYANCES, 8, 9, 10, 11, 14, 15.

ADMINISTRATION.

See ABATEMENT, 1. BILL OF INTERPLEADER, 1. PUBLIC ADMINISTRATOR. SPANISH LAW, 1.

1. An order of distribution, by the county or probate court, is not essential to the right of an heir to maintain a suit against the administrator for his distributive share of the estate. *State to the use of Ingram* v. *Morton*, 53.
2. In a suit upon an administrator's bond, where the breach assigned was, that the administrator had failed to pay over money to which the plaintiff was entitled as heir of the intestate, *it was held*, that the record of a former recovery in a suit on the same bond, where the same breach was assigned, was only *prima facie* evidence that the amount claimed in the second suit was passed upon in the former one; and that parol evidence was admissible to show that it was not passed upon, although, under the declaration in the former suit, it could have been given in evidence. *State* v. *Morton*, 53.
3. No appeal lies from an opinion of the probate court as to the rights of the distributees of an estate, unless there is an order of distribution. *Dyer* v. *Carr's Executor*, 246.
4. If an administrator could maintain an action for the recovery of personal property held under a conveyance from his intestate, which was void as to creditors, a demand would first be necessary. *Brown's Administrator* v. *Finley*, 375.

ADMINISTRATION—(*Continued.*)

5. An administrator cannot impeach a voluntary conveyance of his intestate for fraud as to creditors, although the estate may be insolvent. *Ib.*
6. The prohibition of the statute (R. C. 1845) against the issuing of letters of administration upon the estate of a deceased minor, only applies to those cases where there are no debts except those which the guardian has allowed to be created. It does not apply where there are demands for which the minor would have been liable to an action. *George & Ratcliffe* v. *Dawson's Guardian*, 407.
7. An administration sale passes no title unless a deed is executed. *Wohlien* v. *Speck*, 561.

AGENCY.

See PRINCIPAL AND AGENT.

APPEAL.

See WRIT OF ERROR. ASSAULT AND BATTERY, 3. PRACTICE, 18. COSTS, 4.

1. No appeal lies from an opinion of the probate court as to the rights of the distributees of an estate, unless there is an order of distribution. *Dyer* v. *Carr's Executor*, 246.
2. An appeal does not lie from the refusal of a court to permit a party claiming an interest in a suit pending against others to be made a co-defendant. *Roberts* v. *Patton*, 485.

APPLICATION OF PAYMENTS.

1. In an action by a principal to recover goods tortiously delivered by his factor to the defendant, *it was held*, that a payment which had been made by the factor to his principal on a running account of consignments, there having been no appropriation of the payment by the parties to any particular items of the account, would not be applied in satisfaction of the charge for the goods sued for. *Benny* v. *Rhodes*, 147.

ARBITRATIONS AND REFERENCES.

1. An award of arbitrators is properly vacated where it appears that they heard the evidence before they were sworn. *Toler* v. *Hayden*, 399.

ASSAULT AND BATTERY.

1. In a civil action of assault and battery, the record of an indictment for the same offence to which the defendant pleaded guilty, is admissible evidence. *Corwin* v. *Walton*, 71.
2. In a civil action of assault and battery, the plaintiff may recover exemplary damages, notwithstanding the defendant has been convicted and fined, in a criminal prosecution for the same offence. *Ib.*
3. A party who appeals from a conviction and fine before a justice for an assault and battery, and enters into the recognizance required by statute, is not obliged to appear *in person* to prosecute his appeal, and it is error to affirm the judgment upon his failure to do so. *State* v. *Buhs*, 318.

ASSAULT WITH INTENT TO KILL.

See INDICTMENT, 1.

ASSIGNMENT.

See EVIDENCE, 7, 8.

1. A judgment debtor will be protected in paying to the plaintiff in the judgment, as against an assignee, who has given no notice of the assignment. *Frissell & Johnson* v. *Haile*, 18.
2. Under the new code, a right of action for the conversion of property may be assigned, so as to enable the assignee to sue in his own name. *Smith* v. *Kennett*, 154.
3. A demand, however, is essential to the assignee's right of action, if the property is in existence. *Ib.*
4. An order drawn on the whole of a debt is an equitable assignment of it, and under the new practice, the party in whose favor the order is drawn may sue for the debt in his own name. *Walker* v. *Mauro*, 564.

ASSUMPSIT.

1. An action lies to recover back money paid by an insurance company upon a policy, in ignorance of an insurance subsequently effected, which avoided the policy. *Columbus Insurance Co.* v. *Walsh*, 229.
2. The fact that the party in whose name the insurance was effected and to whom the loss was paid, merely acted as agent of the real owner, and had paid over to him, will not prevent his liability back to the company, unless he disclosed his agency before payment. *Columbus Insurance Co.* v. *Walsh*, 229.

ATTACHMENT.

See PRACTICE, 1, 5, 11. GARNISHMENT.

1. A. shipped a quantity of gold dust to B., with directions to sell it, and pay the proceeds to C., a creditor of A. It did not appear that C. had assented to this arrangement, or that he was advised of it. Before B. paid the money to C. he was summoned as garnishee in an attachment suit against A. *Held*, the money still remained the property of A. and was subject to the garnishment. *Briggs* v. *Block*, 281.

ATTORNEY AND COUNSEL.

1. Attorneys have no lien for their fees upon judgments recovered by them. The defendant will be protected in paying the money to the plaintiff in the judgment, notwithstanding he may have notice that the fees of the attorneys are unpaid. *Frissell & Johnson* v. *Haile*, 18.
2. An attorney who purchases in for his own benefit a title adverse to that of his client, is not liable to an action in favor of a subsequent grantee of his client. *Cowan* v. *Barret*, 257.

BILL OF INTERPLEADER.

1. An administrator who has been ordered by a county or probate court to pay over to the distributees of the estate cannot, *under ordinary circumstances*, maintain a bill of interpleader against those claiming the benefit of the order. The order is conclusive unless appealed from; if it is general, not naming the distributees, the administrator may obtain a specific order. *Freeland* v. *Wilson*, 380.
2. A bill of interpleader may be maintained against *non-residents*, under circumstances otherwise appropriate. *Ib.*

BILLS OF EXCHANGE AND NEGOTIABLE NOTES.

See PROMISSORY NOTES, 1, 9.

1. It is well settled that the maker of a negotiable note may be summoned as garnishee of the holder. *Colcord & Hall* v. *Daggett*, 557.
2. The plaintiffs in an execution, who have recovered judgment against the maker of a negotiable note summoned as garnishee, will be liable to a third party, who proves to have been the real holder of the note at the time of the garnishment. *Ib.*
3. A deed of trust executed by the garnishee to the defendant in the execution, reciting that the former was indebted to the latter in the amount of a negotiable note which the deed was given to secure, *was held* sufficient evidence to authorize a judgment against the garnishee, his answer not positively denying that the defendant was the holder of the note, and no other person asserting a claim to it, at the trial, although it was then long past due. *Ib.*

BOATS AND VESSELS.

1. Under the act concerning boats and vessels, a boat cannot be held responsible for the breach of a contract of affreightment made by a person in possession of her as a trespasser. *Bates* v. *Steamboat Madison*, 99.
2. Where a party fails to furnish freight to a boat according to contract, the measure of damages is the price agreed to be paid for the transportation. The defendant, however, may offer evidence to reduce the damages below this standard, as, for instance, by showing that the boat obtained other freight. *Dean* v. *Ritter*, 182.
3. What amounts to a delivery of freight is a question of fact for the jury. *Fletcher* v. *St. Louis Marine Insurance Co.*, 193.
4. The plaintiff, at Louisville, Kentucky, engaged passage on a steamboat for Cairo, Illinois. Before the boat arrived at Cairo, the plaintiff, with the consent of the officers of the boat, extended his passage to St. Louis, and paid his fare. Before he changed his destination, his trunk was lost. *Held*, he had no lien upon the boat for his damages, under our act concerning "boats and vessels." *Fisk* v. *Steamboat Forest City*, 587.

BONDS AND NON-NEGOTIABLE NOTES.

See ADMINISTRATION, 2. PROMISSORY NOTES, 1. EVIDENCE, 7, 8.

1. A bond given by one party to another for a valuable consideration, conditioned that a third party shall not engage in a particular business, is not void, as being in restraint of trade. *Presbury* v. *Fisher & Bennett*, 50.
2. A bond may be void in part and valid in part, if the valid and void conditions are capable of being separated. Thus, where one of the conditions in a bond is valid, and the other void, and the whole penalty is forfeited by a breach of either, the obligee may recover for a breach of the valid condition. *Ib.*
3. The sureties in a bond of indemnity, given to a sheriff to procure the sale under execution of property belonging to a person other than the defendant in the execution, are liable as trespassers. *Wetzell* v. *Waters*, 396.

BREACH OF PROMISE OF MARRIAGE.

1. It is no defence to an action for a breach of promise of marriage, that the plaintiff had previously contracted to marry another person. *Roper* v. *Clay*, 383.
2. Seduction is admissible in evidence in aggravation of damages in an action for a breach of promise of marriage. *Ib.*

CARONDELET.

1. The statute of limitations did not begin to run against the inhabitants of the town of Carondelet, until they were incorporated, and thus capacitated to sue; but the claim of an occupant of a lot would constitute the ground of a valid compromise between him and the inhabitants. *Reilly* v. *Chouquette*, 220.
2. An act of the legislature authorized the board of trustees of the town of Carondelet to sell and convey property of the town, and authorized the chairman of the board to execute the deeds. Under this act, the board of trustees passed an ordinance, authorizing the chairman to convey lots of a certain size to those inhabitants of the town who had possessed and cultivated the same, upon the establishment of their claims. *It was held*, that a deed executed by the chairman, *in his own name*, was to be considered as the act of an agent appointed by law to perform it, with the concurrence of the corporation, and as such passed the title of the town. *Ib.*
3. A deed executed by the chairman acting in good faith, clothed with the formalities of the law, is to be regarded as valid until it is shown that his act was a mere usurpation, founded on no facts warranted by law. No errors of judgment nor mistaken conclusions of law would invalidate it; nor would the fact that the lot conveyed was not the identical one claimed. *Ib.*
4. When a deed cannot operate but as the execution of a power, it will be presumed to be in execution of the power. *Ib.*
5. A confirmation with an official survey, under the act of 1836, is a better title than the confirmation of commons to the inhabitants of Carondelet by the act of 1812, without an approved survey. *Inhabitants of Carondelet* v. *Dent*, 284.

CITY OF LEXINGTON.

1. A city ordinance, giving the board of health a general supervision over the health of the city, *was held* to include the power to rent a building to be used as a hospital, to protect the city from the infection of cholera. *Aull* v. *City of Lexington*, 401.

CITY ORDINANCE.

See CITY OF LEXINGTON.

COMMUNITY.

See HUSBAND AND WIFE, 4, 5.

1. By the Spanish law, which formerly prevailed here, property owned by husband and wife in community might, during the existence of the community, be conveyed by the husband without the consent of his

CITY ORDINANCE—(*Continued.*)

wife. The introduction of the common law, and of laws prescribing the mode in which a married woman might convey her separate property, did not abrogate this right of the husband to dispose of the community property. *Moreau* v. *Detchemendy*, 522.

CONFIRMATION.

See LANDS AND LAND TITLES.

CONSIDERATION.

See FAILURE OF CONSIDERATION.

1. An accepted order, payable in articles to be manufactured by the acceptor at a future time, does not import a consideration, and cannot be sued upon as an inland bill of exchange, or as a promissory note; nor does it, like an accepted order to deliver specific articles which are designated, vest the property in the person in whose favor it is drawn. *Jeffries* v. *Hager*, 272.

CONSTABLE.

See JUSTICES' COURTS, 1, 2.

CONSTITUTION.

1. A discharge under the insolvent laws of one state will not discharge the insolvent from a contract made with a citizen of another state. *Faretra* v. *Keevil*, 186.
2. The ordinance of the city of St Louis prescribing that boats coming from below Memphis, having had on board, at any time during the voyage, more than a specified number of passengers, should remain in quarantine not less than forty-eight hours nor more than twenty days, is not repugnant to that clause in the constitution of the United States which reserves to congress the exclusive right to regulate commerce. *City of St. Louis* v. *McCoy*, 238.

CONTEMPT.

See NOTARY PUBLIC, 1.

CONTRACTS.

See TENDER, 1. INSOLVENT DEBTORS, 2. CONSTITUTION, 1. SPECIFIC PERFORMANCE, 1.

1. *It seems*, that the doctrine of the common law that contracts in restraint of trade are void, is regarded with less favor than formerly, the reasons in which it had its origin having, in a measure, ceased. *Presbury* v. *Fisher & Bennett*, 50.
2. A verbal agreement not thereafter to run carriages on a particular route is not void by the statute of frauds, as a contract not to be performed within one year from the making thereof. The statute does not apply to contracts which *may* be performed within one year. *Foster* v. *McO'Blents & Matthews*, 88.
3. A party who contracts not to run omnibusses on a particular route, cannot evade his contract by associating others with him, and running them under the name of a new firm. *Ib.*

CONTRACTS—(*Continued.*)

4. Nor is it any justification that the party who bought him off, so as to get a monopoly of the route, did not furnish carriages enough for the accommodation of the public. This only goes to the measure of damages. *Ib.*
5. Where there is a contract for the delivery of shingles by the thousand, it may be shown that, by the general, well established and known custom of the trade, two packs of a certain size are counted as a thousand, and when such custom is shown, the parties will be understood to have contracted with reference to it. *Soutter* v. *Kellerman*, 509.
6. The defendant subscribed for a share of stock in a telegraph line. Annexed to the subscription, was a stipulation, among others, by which a committee was named "to see that the stipulations are and will be complied with, before the subscriptions are paid." *Held*, the action of the committee was not a condition precedent to a recovery of the price of the stock. *Shaffner & Veitch* v. *Jeffries*, 512.

CONVEYANCES.

See FRAUDULENT CONVEYANCES.

1. Where land conveyed is sufficiently described by metes and bounds, the grantee takes all within them, whether it be more or less than the quantity stated in the deed. *Marshall* v. *Bompart*, 84.
2. An act of the legislature authorized the board of trustees of the town of Carondelet to sell and convey property of the town, and authorized the chairman of the board to execute the deeds. Under this act, the board of trustees passed an ordinance, authorizing the chairman to convey lots of a certain size to those inhabitants of the town who had possessed and cultivated the same, upon the establishment of their claims. *It was held* that a deed executed by the chairman, *in his own name*, was to be considered as the act of an agent appointed by law to perform it, with the concurrence of the corporation, and as such passed the title of the town. *Reilly* v. *Chouquette*, 220.
3. A deed executed by the chairman acting in good faith, clothed with the formalities of the law, is to be regarded as valid until it is shown that his act was a mere usurpation, founded on no facts warranted by law. No errors of judgment nor mistaken conclusions of law would invalidate it; nor would the fact that the lot conveyed was not the identical one claimed. *Ib.*
4. When a deed cannot operate but as the execution of a power, it will be presumed to be in execution of the power. *Ib.*
5. To render a subsequent conveyance an avoidance of the prior conveyance of an infant, it must be inconsistent therewith, so that both cannot properly stand together. Thus, where a minor conveyed her interest in a tract of land, and afterwards acquired another interest by inheritance, a deed subsequently executed by her after majority, conveying "all her right, title and interest" in the tract, *was held*, not to be an avoidance of the prior deed. *Lettensdorfer* v. *Hempstead*, 255.
6. A husband and wife executed a deed, by which they "*bargained, sold*

CONVEYANCES—(*Continued.*)

and quit claimed" to the grantee and his heirs, "all their right, title, interest, estate, claim and demand, as well in possession as in expectancy, of, in and to" a specified tract of land. The wife, at the time, had an interest in the land, upon which the deed might have operated, if it had been properly acknowledged. *Held*, a title subsequently acquired by the husband, by purchase, did not, under the sixth section of the act of 1825, regulating conveyances, enure to the grantee. *Valle* v. *Clemens*, 486.

7. By the Spanish law, which formerly prevailed here, property owned by husband and wife in community might, during the existence of the community, be conveyed by the husband without the consent of his wife. The introduction of the common law, and of laws prescribing the mode in which a married woman might convey her separate property, did not abrogate this right of the husband to dispose of the community property. *Moreau* v. *Detchemendy*, 522.
8. A certificate of a married woman's acknowledgment must substantially comply with the requirements of the statute. A defective certificate cannot be aided by a court of equity, nor by parol proof. *Chauvin* v. *Wagner*, 531.
9. Under the act of 1825, a certificate of a married woman's acknowledgment of a conveyance of her own estate is not vitiated by the omission to state that the contents were *explained* to her, if it is stated that she was *acquainted* with the contents. *Ib.*
10. A majority of the court concur in the opinion that a certificate, which states that the wife "was examined whether she acknowledged that she executed the deed *and relinquished her dower*," and that "she acknowledged that she executed the deed *and relinquished her dower*," will pass her estate, being otherwise sufficient. Judge Ryland dissents. *Ib.*
11. Judge Gamble is of opinion that, under the act of 1825, the omission of the words "*and does not wish to retract*," in a certificate of a married woman's acknowledgment of a conveyance of her own estate, is fatal. Judge Scott dissents. Judge Ryland expresses no opinion. *Ib.*
12. The covenant of seizin will not estop the heirs of the grantor from asserting a title not derived from him. They are merely liable in damages to the extent of the assets that have descended upon them. *Ib.*
13. The covenant for further assurance will not estop the heirs of the grantor from asserting a title not derived from him, unless assets have descended upon them, equal to the value of the property, *at the time they acquired the title* to it. *Ib.*
14. A certificate of acknowledgment of a married woman, which states that "she acknowledged and declared that she was well acquainted with the contents of the deed," is sufficient, although it does not state that the contents were made known to her by the officer. *Thomas* v. *Meier*, 573.
15. A certificate which states that "she acknowledged that she executed the deed freely," but omits to state that she "relinquished her dower," is insufficient to pass dower. *Ib.*

CONVEYANCES—(*Continued.*)

16. No acts of a wife can amount to a *ratification* of a deed which was inoperative to convey her estate by reason of a defective acknowledgment. *Chauvin* v. *Wagner*, 554.

CORPORATIONS.

See CARONDELET. GARNISHMENT, 2, 3. CITY OF LEXINGTON, 1.

1. The charter granted to the Pacific railroad in 1849, was subject to the general law concerning corporations of 1845, which gave the legislature power to alter, suspend or repeal all charters thereafter granted. A person who subscribed for stock under the original charter will not be discharged from his liability to pay for it, by a subsequent legislative alteration of the charter without his consent, the general object of the corporation remaing unchanged. *Pacific Railroad* v. *Renshaw*, 210.

Qu. Whether the legislative control would extend to an entire change in the character and objects of the corporation? *Ib.*

2. An act of the legislature authorized the board of trustees of the town of Carondelet to sell and convey property of the town, and authorized the chairman of the board to execute the deeds. Under this act, the board of trustees passed an ordinance authorizing the chairman to convey lots of a certain size to those inhabitants of the town who had possessed and cultivated the same, upon the establishment of their claims. *It was held* that a deed executed by the chairman, *in his own name*, was to be considered as the act of an agent appointed by law to perform it, with the concurrence of the corporation, and as such passed the title of the town. *Reilly* v. *Chouquette*, 220.

3. A deed executed by the chairman acting in good faith, clothed with the formalities of the law, is to be regarded as valid until it is shown that his act was a mere usurpation, founded on no facts warranted by law. No errors of judgment nor mistaken conclusions of law would invalidate it; nor would the fact that the lot conveyed was not the identical one claimed. *Ib.*

COSTS.

See PRACTICE, 18.

1. The proceeding by *scire facias* on a mechanic's lien must be in the court where the lien is filed, and the plaintiff is entitled to his costs, although the amount recovered is within the jurisdiction of a justice. *Albers* v. *Eilers*, 279.

2. The act of 1847, concerning "costs," is applicable to an ordinary suit upon a mechanic's lien, and the plaintiff, who commences his suit in a court of general jurisdiction, and only recovers an amount within the jurisdiction of a justice, is not entitled to his costs, unless the case is within the exceptions of the act. *Ib.*

3. The supreme court will not interfere with the discretion exercised by the criminal court, in adjudging payment of costs after a hearing, against a party who appears before it under a recognizance to keep the peace, although he is not required to enter into any further recognizance. *State* v. *Hoffman*, 329.

COSTS—(*Continued.*)

4. Where a plaintiff has recovered judgment before a justice of the peace, and on appeal to the circuit court, has judgment for a less sum, it is error to adjudge the whole costs against him. The statute only makes him liable for the costs of the appellate court. *Filley* v. *Talbott*, 416.

COUNTY COURTS.

See ROADS AND HIGHWAYS.

COUNTY WARRANT.

See CRIMES AND PUNISHMENTS, 6. INDICTMENT, 6.

COURTS.

1. Courts may construe their own rules, and the supreme court will only interfere in flagrant cases. *State* v. *Fenly*, 445. *Funkhouser & Pottle* v. *How*, 47.
2. The act of February 23, 1853, establishing the St. Louis land court, and giving it exclusive jurisdiction in certain cases, did not oust the jurisdiction of the other courts in such cases, until the land court was organized by the election of a judge and clerk. *Mason* v. *Woerner & Schleier*, 566.

COVENANT.

See CONVEYANCES, 12, 13.

CRIMES AND PUNISHMENTS.

See INDICTMENT.

1. What constitutes a killing in self-defence, is a question of law. *Harper's Administrator* v. *Phœnix Insurance Co.*, 109.
2. The finder of lost property, having no marks by which the owner can be ascertained, is not guilty of larceny, although he takes it *animo furandi*. *State* v. *Conway*, 321.
3. To constitute larceny, the intention to steal must have been formed at the time of the taking. *Ib.*
4. On a trial for murder, it is error for the court, in its instructions to the jury, to assume that the name of the party slain is correctly stated in the indictment, this being a question of fact for the jury. *State* v. *Dilihunty*, 331.
5. What is a sufficient provocation to mitigate a homicide from murder to manslaughter, is a question of law. *State* v. *Dunn*, 419.
6. Every deliberate and intentional killing is murder in the first degree, within the meaning of our statute, although the design to kill was formed but a moment before it was executed. *State* v. *Jennings*, 435. *State* v. *Dunn*, 419.
7. A county warrant is such an instrument or writing as may be forged, within the meaning of the sixteenth section of article four of the act concerning Crimes and Punishments. R. C. 1845. *State* v. *Fenly*, 445.

CUSTOM.

See CONTRACTS, 5.

DAMAGES.

See PRACTICE 4. WRIT OF ERROR, 1.

DAMAGES—(*Continued.*)

1. Exemplary damages may be recovered in a civil action of assault and battery, notwithstanding a criminal conviction and fine for the same offence. *Corwin* v. *Walton*, 71.
2. Unliquidated damages are not the subject of set-off under the new practice. *Mahan* v. *Ross*, 121. *Pratt & Reath* v. *Menkens*, 158.
3. Damages arising from a different transaction are no defence to an action on a note. *Pratt & Reath* v. *Menkens*, 162.
4. An action by a parent for damages for the loss of his son, who was killed by the negligence of the defendant, a common carrier, does not abate by the death of the plaintiff, but survives to his personal representatives; but the *actual* damages from the loss of the son's services alone survive. *James* v. *Christy*, 162.
5. Where a party fails to furnish freight to a boat, according to contract, the measure of damages is the price agreed to be paid for the transportation. The defendant, however, may offer evidence to reduce the damages below this standard, as, for instance, by showing that the boat obtained other freight. *Dean* v. *Ritter*, 182.
6. The rule laid down in *Cathcart* v. *Walter*, 14 Mo. Rep., as to the measure of damages in forcible entry and detainer, doubted. *Walter* v. *Cathcart*, 256.
7. A party cannot recover any damages caused by the wrongful act of another, which he might have averted at a trifling expense and by reasonable exertions. *Douglass* v. *Stephens*, 362.
8. To make a master responsible for damages caused by his servant, it must be shown that they resulted from a wrongful act done by the command of the master, or from the negligence of the servant in transacting the business for which he was employed. *Ib.*
9. In an action on notes given for the purchase money of land bought by defendant of plaintiff, the defendant may recoup the damages sustained by him, by reason of the false and fraudulent representations of the plaintiff, as to the quality and advantages of the land. *House* v. *Marshall*, 369.
10. Seduction is admissible in evidence in aggravation of damages in an action for a breach of promise of marriage. *Roper* v. *Clay*, 383.
11. It is no defence to an action for a breach of promise of marriage, that the plaintiff had previously contracted to marry another person. *Ib.*
12. In a suit for damages under the code, where the demand is not liquidated or the law does not fix the measure of damages, a writ of inquiry must be executed and the damages proved before final judgment upon a default; and it must appear from the record that there was an inquiry. *Wetzell* v. *Waters*, 396.
13. In an action for a breach of warranty of soundness of a slave, the measure of damages is the difference between the value of the slave, if sound, and the value with the disease or unsoundness, *at the time of sale.* It is error to assume that the slave was not worth any thing at the time of the sale, because he afterwards died of the disease. *Stearns* v. *McCullough*, 411.

DECREE.

See PRACTICE IN CHANCERY, 1.

DEED.

See CONVEYANCE. SHERIFF'S DEED.

1. An administration sale passes no title unless a deed is executed. *Wohlien* v. *Speck*, 561.

DEMAND.

See ASSIGNMENT, 2, 3. ADMINISTRATION, 4.

DEPOSITIONS.

1. As to the propriety of the practice of sending depositions out for the inspection of a jury after they have retired, see *Foster* v. *McO'Blents & Matthews*, 88.
2. The manner of serving notices to take depositions is regulated by the act of 1845, concerning "depositions," and not by the new code of practice. *Miller* v. *McKenna*, 253.
3. A commitment which states that the party committed was adjudged guilty of a contempt in refusing to answer questions while giving his deposition as a witness, "plainly and specially charges a contempt," although it does not in terms state that the questions were relevant or were decided to be relevant. *Ex parte McKee*, 599.
4. A notary public, being an officer authorized to take depositions, has authority under the eighth section of the act concerning "witnesses," (R. C. 1845,) to commit a witness for refusing to answer any questions other than those which it is his personal privilege to refuse to answer. *Ib.*
5. It is not the province of officers taking depositions to pass upon the relevancy of evidence; if, however, a question is clearly frivolous or impertinent, the officer may refuse to compel an answer. *Ib.*

DOWER.

1. A widow's dower may be barred by an equitable jointure, notwithstanding the fourteenth section of the act concerning dower, (R. C. 1845.) A liberal construction will be indulged in support of ante-nuptial settlements made as a substitute for dower. If the provision is ample, they will be upheld, without any nice discrimination between legal and equitable jointures. *Logan* v. *Phillips*, 22.
2. A conveyance of personal property made by a husband during his last sickness, and in expectation of death, with a view to defeat his wife's dower, is void as to her. *Stone* v. *Stone*, 389.
3. The act of 1835, concerning "dower," took effect on the first day of December, 1835, and not before. *Roberts* v. *Stoner*, 481.
4. A certificate of acknowledgment of a married woman, which states that "she acknowledged and declared that she was well acquainted with the contents of the deed," is sufficient, although it does not state that the contents were made known to her by the officer. *Thomas* v. *Meier*, 573.

DOWER—(*Continued.*)

5. A certificate which states that "she acknowledged that she executed the deed freely," but omits to state that she "relinquished her dower," is insufficient to pass dower. *Ib.*

EJECTMENT.

1. Ejectment cannot be maintained against minors upon the possession of their guardian. *Spitts* v. *Wells*, 468
2. A mortgage more than twenty years old is not such an outstanding title as will defeat an action of ejectment, no evidence being given in relation to the possession of the mortgaged premises, nor any evidence of the present existence of the mortgage debt. *Moreau* v. *Detchemendy*, 522.

ENUREMENT.

See CONVEYANCE, 6.

ESTOPPEL.

1. Under the act of congress of March 23, 1823, where the register and receiver, under the advice and direction of the school commissioners appointed by the state, located land in lieu of the sixteenth section, granted by the act of March 6, 1820, for the use of schools, and where the land thus located was sold under a law of the state, on the petition of the inhabitants of the township, and the money applied to the benefit of schools in that township, *it was held*, that the state and the inhabitants of the township were estopped from afterwards claiming the sixteenth section. *The State* v. *Dent*, 313.
2. Neither verbal admissions nor mere presence at a survey can operate as an estoppel *in pais*. *Valle* v. *Clemens*, 486.
3. The covenant of seizin will not estop the heirs of the grantor from asserting a title not derived from him. They are merely liable in damages to the extent of the assets that have descended upon them. *Chauvin* v. *Wagner*, 532.
4. The covenant for further assurance will not estop the heirs of the grantor from asserting a title not derived from him, unless assets have descended upon them, equal to the value of the property, *at the time they acquired the title* to it. *Ib.*

EVIDENCE.

See PLEADING, 3. INDICTMENT, 1. EVIDENCE, 2.

1. In a suit upon an administrator's bond, where the breach assigned was, that the administrator had failed to pay over money to which the plaintiff was entitled as heir of the intestate, *it was held*, that the record of a former recovery in a suit on the same bond, where a similar breach was assigned, was only *prima facie* evidence that the amount claimed in the second suit was passed upon in the former one; and that parol evidence was admissible to show that it was not passed upon, although, under the declaration in the former suit, it could have been given in evidence. *State* v. *Morton*, 53.
2. In a civil action of assault and battery, the record of an indictment for

EVIDENCE—(*Continued.*)

the same offence to which the defendant pleaded guilty, is admissible evidence. *Corwin* v. *Walton*, 71.

3. Parol evidence is admissible to show that a party whose name appears on the back of a note payable to another did not sign as maker, but as endorser, and that such was the understanding of the parties at the time. *Lewis & Brothers* v. *Harvey & Stewart*, 74.
4. The security in a bond for the forthcoming of a boat seized under the act concerning boats and vessels, is a competent witness for the boat, under the code. *Bates* v. *Steamboat Madison*, 99.
5. Under the code, interest does not render a witness incompetent, unless he is a party to the suit, or a person for whose immediate benefit it is prosecuted or defended, or an assignor of a thing in action assigned for the purpose of making him a witness. *Ib.*
6. Identity of name is *prima facie* evidence of identity of person. *Gitt* v. *Watson*, 274.
7. The admissions of the obligee of a bond, while he was the owner of it, that it was given for an illegal consideration, are competent evidence against his assignee. *Murray* v. *Oliver*, 405.
8. If evidence of such admissions is excluded, the error is not cured by the fact that the obligee is afterwards sworn as a witness, at the instance of the party offering them. *Ib.*
9. Where a witness has been permitted to speak of the contents of a writing, without having it present or accounting for its absence, the court should exclude such evidence from the jury, if it is objected to while the witness is still testifying. *Filley* v. *Talbott*, 416.
10. No principle is better settled than that a receipt may be explained by parol evidence. *Weatherford* v. *Farrar*, 474.
11. A deed of trust executed by the garnishee to the defendant in the execution, reciting that the former was indebted to the latter in the amount of a negotiable note which the deed was given to secure, *was held* sufficient evidence to authorize a judgment against the garnishee, his answer not positively denying that the defendant was the holder of the note, and no other person asserting a claim to it, at the trial, although it was then long past due. *Colcord & Hall* v. *Daggett*, 557.
12. A certificate of confirmation issued by recorder Conway, in 1834, of a claim included in Hunt's list of confirmations under the act of 1824, is *prima facie* evidence of all the facts necessary to a confirmation by the act of 1812. *Soulard* v. *Allen*, 590.
13. An official survey is *prima facie* evidence of the boundaries and location of the land confirmed. *Ib.*
14. Where a map, which is referred to in a deed for the boundaries and location of the land confirmed, is lost, another map, which is proved to be one of three originals, is admissible in evidence. *Ib.*

EXECUTION.

See GARNISHMENT, 1. FRAUDULENT CONVEYANCES, 4. TRESPASS, 1.

1. A sale of land under execution after the death of the defendant, the levy

EXECUTION—(*Continued.*)

having been made before his death, is not void, but at most only voidable. (This case arose under the law as it stood before 1845.) *Mundy's Administrator* v. *Bryan*, 29.

2. Property was seized by a constable under an execution. A third party interposed a claim, which was tried before a constable's jury under the statute. The verdict of the jury was, that the property belonged to the *plaintiffs* in the execution. *Held*, this verdict justified the constable in selling. *Schroeder & Evers* v. *Clark*, 184.
3. The eighth article of the code, relative to the claim and delivery of personal property, does not repeal the fourteenth section of the seventh article of the act concerning justices' courts, which authorizes a trial before the constable of the right to property seized under execution, where a third party interposes a claim. If a trial is had at the instance of the claimant and the right found against him, he cannot afterwards sue the officer, though he may all other parties who have interfered with his property. *Ib.*
4. Under the act amendatory of the act concerning executions, approved March 5, 1849, property acquired by the husband by *purchase* after marriage, is not exempt from execution for debts contracted by the wife before marriage. *Phelps* v. *Tappan*, 393.
5. Under the 38th and 45th sections of the act of 1835, concerning "executions," a sheriff's deed which recited that the land was exposed to sale" at the court house door, in the city of St. Louis, during the ——— term of the ——— court of ———, for the year eighteen hundred and forty ——, was held void. *Tanner* v. *Stine*, 580.

EXECUTORS AND ADMINISTRATORS.

See SPANISH LAW, 1. ADMINISTRATION.

EXTINGUISHENT.

See PRINCIPAL AND SURETY, 2.

FACTOR.

1. A. consigned goods to B., a factor, for sale on commission. B. delivered the goods to C. in payment of his own antecedent debt. *Held*, A.'s title was not divested. *Benny* v. *Rhodes*, 147.
2. The circumstance that a factor has a lien on goods consigned to him, for advances, will not authorize him to deliver the goods in payment of his own debt, or to sell them in an unusual and irregular manner. *Ib.*
3. In an action by a principal to recover goods tortiously delivered by his factor to the defendant, *it was held*, that a payment which had been made by the factor to his principal on a running account of consignments, there having been no appropriation of the payment by the parties to any particular items of the account, would not be applied in satisfaction of the charge for the goods sued for. *Ib.*
4. A factor cannot deliver the goods of his principal in payment of his own debts, so as to pass the title, notwithstanding the state of accounts between him and his principal, at the time, may be in his favor. *Benny & House* v. *Pegram*, 191.

FAILURE OF CONSIDERATION.

1. Where a note given for a quit claim deed was payable unless the grantees should within twelve months establish that the grantors had no title, *it was held*, that if the grantees failed to establish the want of title within twelve months, they could not afterwards set the same up as a defence to the note by way of failure of consideration. *Carter* v. *Harber & Pelham*, 204.

FORCIBLE ENTRY AND DETAINER.

1. The action of forcible entry and detainer does not abate by the death of one of the plaintiffs. *Carlisle & Keyser* v. *Rawlings*, 166.
2. The rule laid down in *Cathcart* v. *Walter*, 14 Mo. Rep., as to the measure of damages in forcible entry and detainer, doubted. *Walter* v. *Cathcart*, 256.

FOREIGN JUDGMENTS AND LAWS.

See JUDGMENTS OF SISTER STATES.

FORGERY.

See CRIMES AND PUNISHMENTS, 6. INDICTMENT, 6.

FORMER RECOVERY.

1. In a suit upon an administrator's bond, where the breach assigned was, that the administrator had failed to pay over money to which the plaintiff was entitled as heir of the intestate, *it was held*, that the record of a former recovery in a suit on the same bond, where a similar breach was assigned, was only *prima facie* evidence that the amount claimed in the second suit was passed upon in the former one; and that parol evidence was admissible to show that it was not passed upon, although, under the declaration in the former suit, it could have been given in evidence. *State* v. *Morton*, 53.

FRAUDULENT CONVEYANCES.

1. Under the eighth section of the act concerning fraudulent conveyances, (R. C. 1845,) the purchaser of personal property from a mortgagor in possession, will hold against a prior unrecorded mortgage, even though he had notice of it. But such would not be the case if the mortgage was recorded within a reasonable time after its execution. *Bryson & Hardin*, v. *Pentx*, 13.
2. If A. fraudulently transfers property to B., a purchaser from B., even for a valuable consideration, with notice of the fraud between A. and B. will take no title, as against A.'s creditors; but a third party who receives the property from B. in payment of a just debt, without notice of the fraud between A. and B. will hold it against the creditors of A. *Knox* v. *Hunt & Labeaume*, 174.
3. See the case of *Stagg* v. *Franklin & Fitch*, 299.
4. A party who receives a fraudulent conveyance of land, and makes no disclaimer, cannot strengthen his title by purchasing in the land at a sale under an execution against the fraudulent grantor. *Stagg* v. *Franklin & Fitch*, 299.

FRAUDULENT CONVEYANCES—(*Continued.*)

5. An administrator cannot impeach a voluntary conveyance of his intestate for fraud as to creditors, although the estate may be insolvent. *Brown's Administrator* v. *Finley*, 375.
6. A conveyance of personal property made by a husband during his last sickness, and in expectation of death, with a view to defeat his wife's dower, is void as to her. *Stone* v. *Stone*, 389.

FRAUDS AND PERJURIES.

1. A verbal agreement not thereafter to run carriages on a particular route is not void by the statute of frauds, as a contract not to be performed within one year from the making thereof. The statute does not apply to contracts which *may* be performed within one year. *Foster* v. *McO'Blenis & Matthews*, 88.

GAMING.

See INDICTMENT, 3.

GARNISHMENT.

1. The denial of the answer of a garnishee need not be verified by affidavit under the new code. *Briggs* v. *Block*, 281. *Stewart* v. *Anderson*, 82.
2. The treasurer of a corporation, having its money in his hands, is not liable to garnishment, in a suit against a creditor of the corporation. *Neuer* v. *O'Fallon*, 277.
3. The fact that the corporation has directed its treasurer to pay out of its funds in his hands a specific sum to the defendant in the attachment suit, as a mere gratuity for the benefit of third parties, will not render the treasurer liable to the process of garnishment, nor would it render the corporation thus liable. *Ib.*
4. It is not necessary that the name of every person summoned as garnishee in an attachment suit should be inserted in the writ. *Briggs* v. *Block*, 281.
5. The supreme court will not interfere with the discretion exercised by inferior courts in the matter of permitting allegations and interrogatories to garnishees to be filed after the regular time has elapsed, but before the end of the term. *Ib.*
6. A. shipped a quantity of gold dust to B., with directions to sell it, and pay the proceeds to C., a creditor of A. It did not appear that C. had assented to this arrangement, or that he was advised of it. Before B. paid the money to C. he was summoned as garnishee in an attachment suit against A. *Held*, the money still remained the property of A. and was subject to the attachment. *Ib.*
7. It is well settled that the maker of a negotiable note may be summoned as garnishee of the holder. *Colcord & Hall* v. *Daggett*, 557.
8. The plaintiffs in an execution, who have recovered judgment against the maker of a negotiable note summoned as garnishee, will be liable to a third party, who proves to have been the real holder of the note at the time of the garnishment. *Ib.*
9. A deed of trust executed by the garnishee to the defendant in the execu-

GARNISHMENT—(*Continued.*)

tion, reciting that the former was indebted to the latter in the amount of a negotiable note which the deed was given to secure, *was held* sufficient evidence to authorize a judgment against the garnishee, his answer not positively denying that the defendant was the holder of the note, and no other person asserting a claim to it, at the trial, although it was then long past due. *Ib.*

GROCERIES AND DRAM SHOPS.

See INNS AND TAVERNS, 1, 2.

GUARANTY.

See PROMISSORY NOTES, 5, 6.

GUARDIAN AND WARD.

See INFANT, 1. PARTITION, 1, 2. EJECTMENT, 1.

1. The prohibition of the statute (R. C. 1845) against the issuing of letters of administration upon the estate of a deceased minor, only applies to those cases where there are no debts except those which the guardian has allowed to be created. It does not apply where there are demands for which the minor would have been liable to an action. *George & Ratcliffe* v. *Dawson's Guardian*, 407.

HABEAS CORPUS.

See DEPOSITIONS, 3, 4.

HUSBAND AND WIFE.

See DOWER. MARRIAGE CONTRACT. CONVEYANCE, 6, 8, 9, 10, 11, 14, 15.

1. If the husband makes a reasonable allowance to the wife for necessaries during his temporary absence, and a tradesman, *with notice* of this, supplies her with goods, the husband is not liable, unless the tradesman can show that the allowance was not supplied. *Otherwise*, if the tradesman has no notice. *Harshaw v. Merryman*, 106.
2. A conveyance of personal property, made by a husband during his last sickness, and in expectation of death, with a view to defeat his wife's dower, is void as to her. *Stone* v. *Stone*, 389.
3. Under the act amendatory of the act concerning executions, approved March 5, 1849, property acquired by the husband by *purchase* after marriage, is not exempt from execution for debts contracted by the wife before marriage. *Phelps* v. *Tappan*, 393.
4. A confirmation by the act of June 13th, 1812, vested the title in the husband alone, as the head of the family, leaving the rights of the wife to be ascertained by the terms of the marriage contract, if any existed, or the laws regulating dower or community. *Byron* v. *Sarpy*, 455.
5. Where the husband abandoned his possession prior to June 13th, 1812, neither he nor his wife had any claim upon which the act could operate. The abandonment of the husband was the abandonment of the wife. *Ib.*
6. By the Spanish law, which formerly prevailed here, property owned by husband and wife in community might, during the existence of the com

HUSBAND AND WIFE—(*Continued.*)

munity, be conveyed by the husband without the consent of his wife. The introduction of the common law, and of laws prescribing the mode in which a married woman might convey her separate property, did not abrogate this right of the husband to dispose of the community property. *Moreau* v. *Detchemendy*, 522.

INDICTMENT.

See JURORS.

1. The indictment charged that the defendant assaulted "Silas Melville," with intent to kill. The proof was that the name of the person assaulted was "Melvin." *Held*, this was such a variance as that the court should have directed an acquittal. *State* v. *Curran*, 320.
2. On a trial for murder, it is error for the court, in its instructions to the jury, to assume that the name of the party slain is correctly stated in the indictment, this being a question of fact for the jury. *State* v. *Dillhunty*, 331.
3. An indictment which charged the defendant with permitting a gaming device to be "set up *and* used," *was held* not bad for duplicity. *The State* v. *Fletcher*, 425.
4. The failure of a clerk to enter upon an indictment the day of its return into court, does not entitle the defendant to his discharge. *The State* v. *Clark*, 432.
5. One good count in an indictment will support a general verdict, no matter how many defective counts there may be. *State* v. *Jennings*, 435.
6. Where a party is charged with altering or forging a county warrant, an indictment is sufficient which alleges that he falsely altered and forged the warrant, &c., intending to defraud, &c., setting forth the warrant *in hæc verba*, without alleging, in the words of the statute, that it was an instrument or writing, being or purporting to be the act of another, by which, a pecuniary demand or obligation was or purported to be transferred, created, &c., or by which, rights of property were or purported to be transferred, &c., or in any manner affected. (SCOTT, J., dissenting.) *State* v. *Finley*, 445.

INFANT.

See PARTITION, 1, 2. EJECTMENT, 1.

1. Under the act regulating chancery practice, (R. C. 1845,) an order appointing a guardian *ad litem* for minor defendants, who have not been served with process, is erroneous. *Hendricks* v. *McLean*, 32.
2. Under that act, it is no objection to a decree otherwise regular, that it does not give infant defendants a day to show cause after coming of age. *Ib.*
3. To render a subsequent conveyance an avoidance of the prior conveyance of an infant, it must be inconsistent therewith, so that both cannot properly stand together. Thus, where a minor conveyed her interest in a tract of land, and afterwards acquired another interest by inheritance, a deed subsequently executed by her after majority, conveying "all her

INFANT—(*Continued.*)

right, title and interest" in the tract, *was held*, not to be an avoidance of the prior deed. *Leitensdorfer* v. *Hempstead*, 269.

INNS AND TAVERNS.

1. The act of March 10th, 1849, repealing the act of February 16th, 1847, amendatory of the act concerning "Inns and Taverns," (R. C. 1845,) left all the provisions of the act of 1845 in full force, and thereafter the holder of a tavern license was permitted to sell intoxicating liquor, in less quantity than one quart. The act of 1847 being an *amendatory*, and not a repealing act, the provision of our statute, that the repeal of a repealing act shall not revive the original, does not apply. *City of Hannibal* v. *Guyott*, 515.
2. A city ordinance cannot abridge the rights of the holder of a previously issued tavern license, in regard to the sale of intoxicating liquors. *Ib.*

INSOLVENT DEBTORS.

1. In an action on a judgment of another state, *it was held*, that a certificate of discharge in bankruptcy, obtained before the rendition of the judgment, was no defence. *Rees* v. *Butler*, 173.
2. A discharge under the insolvent laws of one state will not discharge the insolvent from a contract made with a citizen of another state. *Fareira* v. *Keevil*, 186.

INSURANCE.

1. A policy of life insurance contained a clause by which it was avoided, if the assured should die in the known violation of a law of the state. *It was held* that, under this clause, the policy would not be avoided, if the assured was killed in an altercation, under circumstances which would make the slayer guilty of manslaughter. To avoid the policy, the killing must have been justifiable or excusable homicide. *Harper* v. *Phœnix Insurance Co.*, 109.
2. What constitutes a killing in self-defence is a question of law. *Ib.*
3. Where one of the conditions in a policy of fire insurance upon the goods of two partners was, that "any transfer or change of title in the property insured" should avoid the policy, *it was held*, that a dissolution of partnership before loss, and a division of the goods, so that each partner owned distinct portions, was a change of title within the meaning of the condition. *Dreher & Bumb* v. *Ætna Insurance Company*, 128.
4. An open policy of insurance upon shipments gave a general privilege of reshipment. A boat, upon which a particular shipment covered by the policy was made, abandoned the voyage which she might have completed, and the goods, after some delay, were reshipped upon another boat. *It was held*, that the reshipment did not avoid the policy. If the *delay* was such a deviation as would avoid the policy, it could only be available to the insurers when relied upon in their answer. *Fletcher* v. *St. Louis Marine Insurance Co.*, 193.
5. By the terms of an open policy, the risk commenced "from and immedi-

INSURANCE—(*Continued.*)

ately following the loading of the goods on board the boat or vessel," and continued "until the arrival of said boat or vessel at the port of destination, and with reasonable time allowed to discharge the cargo." Part of a particular shipment covered by the policy was discharged at the port of destination, but a reasonable time had not elapsed to discharge the remainder. *It was held,* that the risk did not cease as to the part discharged, unless it had been delivered to and received into custody by the consignee. *Ib.*

6. What amounts to a delivery and acceptance is a question of fact for the jury. *Ib.*
7. An action lies to recover back money paid by an insurance company, in ignorance of an insurance subsequently effected, which avoided the policy. *Columbus Insurance Co.* v. *Walsh*, 229.
8. The fact that the party in whose name the insurance was effected and to whom the loss was paid, merely acted as agent of the real owner, and had paid over to him, will not prevent his liability back to the company unless he disclosed his agency before payment. *Ib.*
9. The fact that an agency of a foreign insurance company fails to take out a license according to law, will not prevent the company from maintaining or defending a suit. *Ib.*
10. An absolute assignment or sale of insured property after insurance is effected, takes away the insurable interest of the vendor, and creates a bar to the right of action on the policy, unless by some means its existence has been preserved for the benefit of the assignee. *Morrison's Adm'r* v. *Tennessee Marine & Fire Insurance Co.*, 262.
11. Where A. effected an insurance on property, and afterwards sold and conveyed it to B., who reconveyed it to a trustee to secure to A. the payment of the purchase money, *it was held* that A. retained an insurable interest, and after a loss might recover on the policy to the extent of his actual loss, not to exceed the sum insured. *Ib.*
12. The failure of the insured to disclose the state of his title, or the extent of his interest in the insured property, will not avoid the policy, unless there is a fraudulent concealment or misrepresentation. If the insurer deems this information material, he may protect himself by inquiry, or by the conditions of his policy. *Ib.*
13. The right of a surety to be subrogated to the securities of his principal, does not arise until he has paid the principal's debt. Thus the insurance company could not be subrogated to A.'s rights against B. until it had paid the insurance, if at all. *Ib.*

INTERPLEADER.

See PRACTICE, 1.

JOINTURE.

See DOWER, 1.

JUDGMENT.

See ASSIGNMENT, 1. JUDGMENTS OF SISTER STATES.

JUDGMENTS OF SISTER STATES.

1. In an action on a judgment of another state, *it was held*, that a certificate of discharge in bankruptcy, obtained before the rendition of the judgment, was no defence. *Rees* v. *Butler*, 173.

JUDICIAL SALE.

See SALE, 3. SPANISH LAW, 1.

JURISDICTION.

1. The act of February 23, 1853, establishing the St. Louis land court, and giving it exclusive jurisdiction in certain cases, did not oust the jurisdiction of the other courts in such cases, until the land court was organized by the election of a judge and clerk. *Mason* v. *Woerner & Schleier*, 566.

JURORS.

1. The illegal manner of summoning a grand jury is no ground for a plea in abatement to an indictment, nor would it, under our statute, be any ground for a challenge to the array. *The State* v. *Bleekley*, 428.

JUSTICES' COURTS.

See ASSAULT AND BATTERY, 3. PRACTICE, 18. COSTS, 4.

1. Property was seized by a constable under an execution. A third party interposed a claim, which was tried before a constable's jury under the statute. The verdict of the jury was, that the property belonged to the *plaintiffs* in the execution. *Held*, this verdict justified the constable in selling. *Schroeder & Evers* v. *Clark*, 184.
2. The eighth article of the code, relative to the claim and delivery of personal property, does not repeal the fourteenth section of the seventh article of the act concerning justices' courts, which authorizes a trial before the constable of the right to property seized under execution, where a third party interposes a claim. If a trial is had at the instance of the claimant and the right found against him, he cannot afterwards sue the officer, though he may all other parties who have interfered with his property. *Ib.*

LAND COURT.

1. The act of February 23, 1853, establishing the St. Louis land court, and giving it exclusive jurisdiction in certain cases, did not oust the jurisdiction of the other courts in such cases, until the land court was organized by the election of a judge and clerk. *Mason* v. *Woerner & Schleier*, 566.

LANDLORD AND TENANT.

1. A landlord has a lien upon the crops grown on the demised premises in any year for the rent of that year, (R. C. 1845,) but this lien can only be enforced by process of law. Rent may be reserved in such a way that the landlord will not be entitled to his lien. *Knox* v. *Hunt & Porter*, 243.
2. The lien continues eight months, and during that time, the landlord may take steps to subject the crop to the payment of the rent. If the

LANDLORD AND TENANT—(*Continued.*)

property remains in specie in the hands of an assignee, he may, during the continuance of the lien, seize it under process, or might, if it was consumed, hold the assignee accountable for its value, if the assignment was voluntary, or taken with a knowledge of the existence of the lien. The crop, during the continuance of the lien, would not be subject to the process of the law at the suit of any other creditor, without payment of the rent, as the lien of the landlord would protect it from sale. Nothing can be seized under execution which cannot be sold. *Ib.*

3. An averment that a party "used and occupied premises with the permission of the owner, thereby becoming his tenant," is a sufficient averment of indebtedness. *Walker* v. *Mauro*, 564.

LANDS AND LAND TITLES.

See SCHOOL LAND.

1. A confirmation with an official survey, under the act of 1836, is a better title than the confirmation of commons to the inhabitants of Carondelet by the act of 1812, without an approved survey. *Inhabitants of Carondelet* v. *Dent*, 284.
2. It is well settled that no claim was confirmed by the act of 1812, which had been abandoned before that date. *Byron* v. *Sarpy*, 455.
3. A confirmation by the act of June 13th, 1812, vested the title in the husband alone, as the head of the family, leaving the rights of the wife to be ascertained by the terms of the marriage contract, if any existed, or the laws regulating dower or community. *Ib.*
4. Where the husband abandoned his possession prior to June 13th, 1812, neither he nor his wife had any claim upon which the act could operate. The abandonment of the husband was the abandonment of the wife. *Ib.*
5. A party claiming title under one of two conflicting Spanish grants cannot obtain the benefit of a confirmation upon the other, even though the former may have been illegally purchased by the confirmee before confirmation. *Charleville* v. *Chouteau*, 492.
6. As between two Spanish grants, it is well settled that the one first confirmed is the better title. *Ib.*
7. A certificate of confirmation issued by recorder Conway, in 1834, of a claim included in Hunt's list of confirmations under the act of 1824, is *prima facie* evidence of all the facts necessary to a confirmation by the act of 1812. *Soulard* v. *Allen*, 590.
8. An official survey is *prima facie* evidence of the boundaries and location of the land confirmed. *Ib.*
9. Where a map, which is referred to in a deed for the boundaries and location of the land confirmed, is lost, another map, which is proved to be one of three originals, is admissible in evidence. *Ib.*

LAND WARRANT.

See WARRANTY, 1.

LARCENY.

1. The finder of lost property, having no marks by which the owner can

LARCENY—(*Continued.*)

be ascertained, is not guilty of larceny, although he takes it *animo furandi*. *State* v. *Conway*, 321.

2. To constitute larceny, the intention to steal must have been formed at the time of the taking. *Ib.*

LICENSE.

See INNS AND TAVERNS, 1, 2.

LIEN.

See ATTORNEY AND COUNSEL, 1. FACTOR, 2.

1. A landlord has a lien upon the crops grown on the demised premises in any year for the rent of that year, (R. C. 1845,) but this lien can only be enforced by process of law. Rent may be reserved in such a way that the landlord will not be entitled to his lien. *Knox* v. *Hunt & Porter*, 243.
2. The lien continues eight months, and during that time, the landlord may take steps to subject the crop to the payment of the rent. If the property remains in specie in the hands of an assignee, he may, during the continuance of the lien, seize it under process, or might, if it was consumed, hold the assignee accountable for its value, if the assignment was voluntary, or taken with a knowledge of the existence of the lien. The crop, during the continuance of the lien, would not be subject to the process of the law at the suit of any other creditor, without payment of the rent, as the lien of the landlord would protect it from sale. Nothing can be seized under execution which cannot be sold. *Ib.*

LIFE INSURANCE.

See INSURANCE, 1.

LIMITATION.

1. The statute of limitations did not begin to run against the inhabitants of the town of Carondelet, until they were incorporated, and thus capacitated to sue; but the claim of an occupant of a lot would constitute the ground of a valid compromise between him and the inhabitants. *Reilly* v. *Chouquette*, 220.
2. A master, who permits his infant slave to remain with its mother during infancy, free from his control, will not be construed to have abandoned his right; nor will the possession of the mother be such adverse possession as is protected by the statute of limitations; nor will the fact that the master permits the mother to receive the benefit of the child's services, after it becomes old enough to render them, in remuneration for her care during its infancy, operate to his disadvantage. *Davis* v. *Evans*, 249.

MARRIAGE CONTRACT.

1. A marriage contract is binding between the parties thereto, although not acknowledged or proved and recorded. *Logan* v. *Phillips*, 22.
2. A widow's dower may be barred by an equitable jointure, notwithstanding the fourteenth section of the act concerning dower, (R. C. 1845.) *Ib.*

MARRIAGE CONTRACT.—(*Continued.*)

3. A liberal construction will be indulged in support of ante-nuptial settlements made as a substitute for dower. If the provision is ample, they will be upheld, without any nice discrimination between legal and equitable jointures. *Ib.*

MASTER AND SERVANT.

See SLAVE.

1. To make a master responsible for damages caused by his servant, it must be shown that they resulted from a wrongful act done by the command of the master, or from the negligence of the servant in transacting the business for which he was employed. *Douglass* v. *Stephens*, 362.

MECHANICS' LIENS.

See COSTS.

1. Where the owner of real estate dies pending a proceeding by *scire facias* to enforce a mechanic's lien, the suit must be revived against his heirs, and not against his personal representatives. *Belcher* v. *Schaumburg*, 189.

MORTGAGE.

See FRAUDULENT CONVEYANCES, 1.

1. A mortgage more than twenty years old is not such an outstanding title as will defeat an action of ejectment, no evidence being given in relation to the possession of the mortgaged premises, nor any evidence of the present existence of the mortgaged debt. *Moreau* v. *Detchemendy*, 522.

NAME.

See INDICTMENT, 1, 2.

NEW TRIAL.

1. An application for a review and new trial under the new code must be made at the term at which the trial took place. *Honey* v. *Honey's Hetrs*, 466.
2. Surprise at the trial is no ground of relief in a court of equity upon a bill for a new trial. *Ib.*

NOTARY PUBLIC.

1. A notary public, being an officer authorized to take depositions, has authority under the eighth section of the act concerning "witnesses," (R. C. 1845,) to commit a witness for refusing to answer any questions other than those which it is his personal privilege to refuse to answer. *Ex parte McKee*, 599.

OFF-SET.

See SET-OFF.

OFFICER.

1. Under the act of 1845, the failure of the general assembly to elect a public printer did not create a vacancy, which the governor could fill by appointment, but the incumbent, who was authorized to hold the office until his successor should be elected and qualified, held over. (Scott J., dissenting.) *The State, ex rel. Tredway* v. *Lusk*, 333.

PARENT AND CHILD.
See ABATEMENT, 1.

PARTITION.
1. Under the act of 1825, concerning partition, no notice by publication to non-resident minor defendants was necessary, where the court appointed a guardian *ad litem*, who appeared and answered the plaintiff's petition. *Hite* v. *Thompson*, 461.
2. Under that act, the guardian *ad litem* had power to consent to a private, instead of a public sale. *Ib.*
3. The statutory mode of partition does not exclude the equitable jurisdiction of the subject. A plaintiff in a partition suit may claim such a division of the land as that he will receive the benefit of, or compensation for improvements made by him before partition; and where partition is made, and he makes no objection to the report of the commissioners, he cannot afterwards maintain a suit to recover compensation for his improvements. *Spitts* v. *Wells*, 468.

PARTNERSHIP.
1. Decree reversed for an error in the adjustment of a partnership account. *White* v. *Bullock*, 16.
2. A member of a firm gave the check of the firm to pay a note of another firm of which he was a member, at a banking house where it was deposited by the holder for collection. *Held*, the firm, out of whose money the note was paid, cannot recover it back, the banker having no notice of the want of authority of the member who drew the check. His notorious insolvency is not constructive notice of his want of authority. *Murphy & Freligh* v. *Camden*, 122.

PAYMENT.
See APPLICATION OF PAYMENTS.
1. A. shipped a quantity of gold dust to B., with directions to sell it, and pay the proceeds to C., a creditor of A. It did not appear that C. had assented to this arrangement, or that he was advised of it. Before B. paid the money to C. he was summoned as garnishee in an attachment suit against A. *Held*, the money still remained the property of A. and was subject to the attachment. *Briggs* v. *Block*, 281.

PLEADING.
See FORMER RECOVERY, 1. PRACTICE, 6, 14. VARIANCE, 2.
1. In a petition on a note against the maker and some of the indorsers, it is not necessary to allege that the note has not been paid by an indorser, who is not joined in the suit, or that the amount of the note is due to the plaintiff. It is sufficient to aver the execution of the note and the non-payment of it by the defendants. *Page & Bacon* v. *Snow*, 126.
2. If a plaintiff, in his petition, charges the defendant as *guarantor* of a note, he cannot recover against him as *surety*, although the defendant sets up in his answer that he is surety, and although the contract of a surety is more onerous than that of a guarantor. The contract of a

PLEADING—(*Continued.*)

guarantor is different from that of a surety. *Perry* v. *Barret*, 140.

3. Under a system of practice which permitted the defence of *liberum tenementum* to be made to an action of trespass *quare clausum fregit*, by evidence under a general plea, without being specially pleaded, *it was held*, that the plaintiff might newly assign the abuttals of his close by evidence. *Emerson & Childs* v. *Sturgeon*, 170.
4. The plaintiff, in her petition, averred, that at the special instance and request of defendant, she had promised to marry him, (without averring that defendant had promised to marry her,) and that defendant, not regarding his said promise, &c., but contriving to injure and deceive the plaintiff, had married another person. *Held* sufficient after verdict, although it would have been bad on demurrer. *Roper* v. *Clay*, 383.
5. An averment that a party "used and occupied premises with the permission of the owner, thereby becoming his tenant," is a sufficient averment of indebtedness. *Walker* v. *Mauro*, 564.
6. An order drawn on the whole of a debt is an equitable assignment of it, and under the new practice, the party in whose favor the order is drawn may sue for the debt in his own name. *Ib.*

PRACTICE IN CHANCERY.

See INFANT, 1, 2.

1. A decree in conformity to the act regulating chancery practice, in a proceeding against unknown heirs, is effectual to pass the title of the heirs. *Gitt* v. *Watson*, 274.

PRACTICE IN SUPREME COURT.

See SUPREME COURT.

PRACTICE AND PROCEEDINGS IN CRIMINAL CASES.

See SUPREME COURT, 14.

1. A party who appeals from a conviction and fine before a justice for an assault and battery, and enters into the recognizance required by statute, is not obliged to appear *in person* to prosecute his appeal, and it is error to affirm the judgment upon his failure to do so. *State* v. *Buhs*, 318.
2. The supreme court will not interfere with the discretion exercised by the criminal court, in adjudging payment of costs after a hearing, against a party who appears before it under a recognizance to keep the peace, although he is not required to enter into any further recognizance. *State* v. *Hoffman*, 329.
3. It is error for a court to comment upon the evidence in a criminal case, unless requested so to do by the prosecuting attorney and the defendant. *The State* v. *Dunn*, 419.
4. A court is not required to select each fact constituting an offence, and instruct the jury to acquit if they have a reasonable doubt of that fact. A general instruction to acquit the accused, if they have a reasonable doubt of his guilt on the whole case, is sufficient. *Ib.*
5. The illegal manner of summoning a grand jury is no ground for a plea in abatement to an indictment, nor would it, under our statute, be any ground for a challange to the array. *The State* v. *Bleekley*, 428.

PRACTICE & PROCEEDINGS IN CRIMINAL CASES—(*Continued.*)

6. There is no doubt of the power of a court to make *nunc pro tunc* entries on the record in furtherance of justice. *State* v. *Clark*, 432.
7. The failure of a clerk to enter upon an indictment the day of its return into court, does not entitle the defendant to his discharge. *Ib.*

PRACTICE.

See SUPREME COURT, 1, 16. PLEADING, 3.

1. The supreme court will not interfere with the discretion exercised by inferior courts in refusing permission to interplead in attachment suits, after the expiration of the time limited by their rules. It is only in flagrant cases that the supreme court will disturb the construction by a court of its own rules. *Funkhouser & Pottle* v. *How*, 47.
2. Under the new code, the denial of the answer of a garnishee need not be verified by affidavit. *Stewart* v. *Anderson*, 82. *Briggs* v. *Block*, 281.
3. Where a judge permitted a deposition, parts of which had been ruled out, to be sent out to a jury after they had retired to make up their verdict, but accompanied it with an instruction that the parts ruled out were not evidence for any purpose, the supreme court refused to disturb the judgment, no exception having been taken, and it not appearing that the testimony ruled out was calculated to prejudice the jury; but intimated that it was not a proper practice. *Foster* v. *McO'Blenis*, 88.
4. Where a plaintiff, who was suing for damages to a boat, proved damage, but not the amount of it, a judgment was erroneously given for the defendant, instead of a judgment for the plaintiff for nominal damages. *Brown* v. *Emerson*, 103.
5. A suit by attachment was commenced before a justice against Benjamin F. Otis and ——— Otis, as non-residents, upon a note signed by B. F. Otis & Co., and judgment by default was rendered against the defendants upon publication. On appeal to the circuit court, *it was held* erroneous to refuse permission to the plaintiff to dismiss as to ——— Otis, it appearing that no such person was ever a member of the firm. *Moore* v. *Otis*, 118.
6. Under the new code, a right of action for the conversion of property may be assigned, so as to enable the assignee to sue in his own name. A demand, however, is essential to the assignee's right of action, if the property is in existence. *Smith* v. *Kennett*, 154.
7. It is error to instruct that a plaintiff cannot recover, if there is any evidence whatever, either direct or inferential, upon which the jury could find a verdict. *Emerson & Childs* v. *Sturgeon*, 170.
8. Case affirmed, because there was no bill of exceptions to the action of the court upon motions. *City of St. Louis* v. *Milligan*, 181.
9. The eighth article of the code, relative to the claim and delivery of personal property, does not repeal the fourteenth section of the seventh article of the act concerning justices' courts, which authorizes a trial before the constable of the right to property seized under execution, where a third party interposes a claim. *Schroeder & Evers* v. *Clark*, 184.

PRACTICE—(*Continued.*)

10. A motion to strike out portions of a pleading should be put in such a shape that the record which goes to the supreme court will show the objectionable portions. *State, to use of Sly* v. *Steinman & Lauman*, 201.
11. *It seems*, that a suit may be commenced against several defendants by attachment as to some and by summons as to others. *Franciscus* v. *Bridges*, 208.
12. Where a suit was thus commenced, and there was personal service and a general judgment against all the defendants, which was afterwards set aside as to one of them on his application, *it was held* erroneous for the court to dismiss the action as to him, upon the ground of the separation. The new code contemplates different judgments in the same action. *Ib.*
13. The manner of serving notices to take depositions is regulated by the act of 1845, concerning "depositions," and not by the new code of practice. *Miller* v. *McKenna*, 253.
14. Under the new practice, a party is not required to file with his pleading all his documentary evidence, nor to set forth every link in his chain of title. *Gitt* v. *Watson*, 274.
15. It is not necessary that the name of every person summoned as garnishee in an attachment suit should be inserted in the writ. *Briggs* v. *Block*, 281.
16. The supreme court will not interfere with the discretion exercised by inferior courts in the matter of permitting allegations and interrogatories to garnishees to be filed after the regular time has elapsed, but before the end of the term. *Ib.*
17. In a suit for damages under the code, where the demand is not liquidated or the law does not fix the measure of damages, a writ of inquiry must be executed and the damages proved before final judgment upon a default; and it must appear from the record that there was an inquiry. *Wetzell* v. *Waters*, 396.
18. The circuit court may affirm the judgment of a justice, when the party appealing fails to prosecute his appeal. (*Martin* v. *White*, 11 Mo. Rep., 214, affirmed.) *Starr* v. *Stewart*, 410.
19. Where a witness has been permitted to speak of the contents of a writing, without having it present or accounting for its absence, the court should exclude such evidence from the jury, if it is objected to while the witness is still testifying. *Filley* v. *Talbott*, 416.
20. There is no doubt of the power of a court to make *nunc pro tunc* entries on the record in furtherance of justice. *The State* v. *Clark*, 432.
21. An application for a review and new trial under the new code, must be made at the term at which the trial took place. *Honey* v. *Honey's Heirs*, 466.
22. A trial before the court without a jury; a general finding for the defendant; no objection to any evidence and no point of law raised. Judgment affirmed. *Haase* v. *Stevens*, 476. *Sickles* v. *Patterson*, 479.

PRACTICE—(*Continued.*)

23. No finding of facts necessary on the trial of a cause appealed from a justice. *Ib.*
24. A court is not warranted in ordering a continuance to be set aside without strong reasons. When it is done at the instance of one party, an authentic copy of the order should be served on the other party. *Marsh* v. *Morse*, 477.
25. Under the new practice, where a plaintiff or defendant dies, the suit can be continued in the name of the representative in interest, only upon the voluntary appearance of the adverse original party, or after the service upon such party of a *scire facias*. The sixteenth section of article five of the practice act of 1845, is not repealed by the new code. *Ferris' Adm'r* v. *Hunt*, 480.
26. The new code does not apply to the trial of a cause appealed from a justice. In such cases, it is still proper to ask declarations of law from the court on a trial without a jury. *Soutier* v. *Kellerman*, 509.
27. An order drawn on the whole of a debt is an equitable assignment of it, and under the new practice, the party in whose favor the order is drawn may sue for the debt in his own name. *Walker* v. *Mauro*, 564.
28. It is not necessary for the court to find the facts upon an enquiry of damages after a judgment by default. *Hubbell & Hunt* v. *Weston & Russell*, 604.

PRINCIPAL AND AGENT.

See CORPORATIONS, 2, 3. FACTOR.

PRINCIPAL AND SURETY.

1. A creditor is entitled to the benefit of all securities given by the principal debtor for the indemnity of his surety. *Haven* v. *Foley & Papin*, 136.
2. A. executed a deed of trust on personal property, to indemnify B. as indorser of a note made by A. to C. Afterwards, D. executed his note to C. for A.'s debt, under an agreement between himself and B. and C. that A.'s note with B.'s indorsement should be delivered to him, and the deed of trust assigned to him. Under this agreement, the deed of trust was by B. and the trustee assigned to D. and the note was by C. handed to B. to be delivered to D., but B. refused to deliver it. *Held*, D.'s note was not an extinguishment of A.'s indebtedness, and D. is entitled to the benefit of the deed of trust given for B.'s indemnity. *Ib.*
3. The right of a surety to be subrogated to the securities of his principal, does not arise until he has paid the principal's debt. *Morrison's Administrator* v. *Tennessee Marine and Fire Insurance Co.*, 262.

PROMISSORY NOTES.

See DAMAGES, 9. BILLS OF EXCHANGE AND NEGOTIABLE NOTES, 1, 2, 3.

1. A party who writes his name on the back of a note, of which he is neither payee nor endorsee, in the absence of extrinsic evidence, is to be treated as a maker of the note, whether it be negotiable under our

PROMISSORY NOTES.—(*Continued.*)

statute or not. *Lewis & Brother* v. *Harvey & Stewart*, 74. *Perry* v. *Barret*, 140.

2. Parol evidence, however, is admissible to show that he did not sign, as maker, but as indorser, and that such was the understanding of the parties at the time. *Ib.*
3. The holder of a note may sue all or any of the parties to it, at his option. *Page & Bacon* v. *Snow*, 126.
4. In a petition on a note against the maker and some of the indorsers, it is not necessary to allege that the note has not been paid by an indorser, who is not joined in the suit, or that the amount of the note is due to the plaintiff. It is sufficient to aver the execution of the note and the non-payment of it by the defendants. *Ib.*
5. If a plaintiff, in his petition, charges the defendant as *guarantor* of a note, he cannot recover against him as *surety*, although the defendant sets up in his answer that he is surety, and although the contract of a surety is more onerous than that of a guarantor. *Perry* v. *Barret*, 140.
6. The contract of a guarantor is different from that of a surety. *Ib.*
7. Damages arising from a different transaction are no defence to an action on a note. *Pratt & Reath* v. *Menkens*, 158.
8. Where a note given for a quit claim deed was payable unless the grantees should within twelve months establish that the grantors had no title, *it was held*, that if the grantees failed to establish the want of title within twelve months, they could not afterwards set the same up as a defence to the note by way of failure of consideration. *Carter* v. *Harber & Pelham*, 204.
9. An accepted order, payable in articles to be manufactured by the acceptor at a future time, does not import a consideration, and cannot be sued upon as an inland bill of exchange, or as a promissory note; nor does it, like an accepted order to deliver specific articles which are designated, vest the property in the person in whose favor it is drawn. *Jeffries* v. *Hager*, 272.

PUBLIC ADMINISTRATOR.

1. The defendant, in a suit brought by a public administrator, cannot require him to show that the facts exist which authorize him to administer. *Wetzell* v. *Waters*, 396.

PUBLIC PRINTER.

1. Under the act of 1845, the failure of the general assembly to elect a public printer did not create a vacancy which the governor could fill by appointment, but the incumbent, who was authorized to hold the office until his successor should be elected and qualified, held over. (Scott, J., dissenting.) *The State, at the relation of Tredway*, v. *Lusk*, 333.

QUARANTINE LAWS.

See CONSTITUTION, 2.

RAILROAD.

1. The charter, granted to the Pacific railroad in 1849, was subject to the

RAILROAD—(*Continued.*)

general law concerning corporations of 1845, which gave the legislature power to alter, suspend or repeal all charters thereafter granted. A person who subscribed for stock under the original charter will not be discharged from his liability to pay for it, by a subsequent legislative alteration of the charter without his consent, the general object of the corporation remaining unchanged. *Pacific Railroad* v. *Renshaw*, 210.

Qu. Whether the legislative control would extend to an entire change in the character and objects of the corporation? *Ib.*

RECEIPT.

1. No principle is better settled than that a receipt may be explained by parol evidence. *Weatherford* v. *Farrar*, 474.

RECOUPMENT.

See DAMAGES, 9.

REMAINDER AND REVERSION.

1. A court, in its discretion, may require a tenant for life of slaves or other property, to give security that the property shall be forthcoming upon the termination of the life estate. *Roberts* v. *Stoner*, 481.

ROADS AND HIGHWAYS.

1. Under the act concerning "roads and highways," (R. C. 1845,) an overseer appointed to open a road cannot deviate from the route designated by the commissioners, against the consent of the owner over whose land the road passes. Where two objects, distant from each other, are marked by the commissioners, as designating the route of the road, the presumption is that the road is located on a straight line from one object to the other, if nothing appears to the contrary from their report or other official action. *Butler* v. *Barr*, 357.
2. The testimony of the commissioners, after they have ceased to be such, is not admissible to vary the legal import of their report. *Ib.*
3. County courts having jurisdiction of the subject matter of opening roads, the order appointing an overseer to open a road is sufficient to protect him from liability as a trespasser on account of irregularity in the proceedings previous to the order. *Ib.*

SALES.

See EXECUTION, 1.

1. If A. fraudulently transfers property to B., a purchaser from B., even for a valuable consideration, with notice of the fraud between A. and B. will take no title, as against A.'s creditors; but a third party, who receives the property from B. in payment of a just debt, without notice of the fraud between A. and B. will hold it against the creditors of A. *Knox* v. *Hunt & Labeaume*, 174.
2. A purchaser at a trustee's sale, the terms of which are cash, must pay the money within a reasonable time. If he fails to do so, upon a tender of a deed, a court of equity will not enforce a conveyance, upon a subsequent tender of the amount of his bid. *Heuer* v. *Rutkowski*, 217.

SALES—(*Continued.*)

3. An administration sale passes no title unless a deed is executed. *Wohlien* v. *Speck*, 561.

SCHOOL LAND.

1. Under the act of congress of March 23, 1823, where the register and receiver, under the advice and direction of the school commissioners appointed by the state, located land in lieu of the sixteenth section, granted by the act of March 6, 1820, for the use of schools, and where the land thus located was sold under a law of the state, on the petition of the inhabitants of the township, and the money applied to the benefit of schools in that township, *it was held*, that the state and the inhabitants of the township were estopped from afterwards claiming the sixteenth section. *The State, to use of Township* 44, v. *Dent*, 313.

SEAL.

1. Where a sheriff's deed is not sealed, a court of equity cannot by its decree aid the imperfect execution. Courts of equity cannot carry into effect by their decrees the incomplete execution of statutory powers. *Moreau* v. *Detchemendy*, 522.

SECURITIES.

See PRINCIPAL AND SURETY, 1, 2.

1. Under the act concerning securities (R. C. 1845) a surety will not be discharged by the fact that the creditor whom he has notified to commence suit against all the parties liable, does not join him in the suit. Nor by the fact that a co-security, who is a non-resident of the state, is not proceeded against. *Perry* v. *Barret*, 140.

SEDUCTION.

See DAMAGES, 10.

SEQUESTRATION.

1. Under what circumstance, a writ of sequestration may issue. *Roberts* v. *Stoner*, 481.

SET-OFF.

1. Unliquidated damages are not the subject of set-off under the new practice. *Mahan* v. *Ross*, 121. *Pratt & Reath* v. *Menkens*, 158.

SHERIFF'S DEED.

1. Where a sheriff's deed is not sealed, a court of equity cannot by its decree aid the imperfect execution. Courts of equity cannot carry into effect by their decrees the incomplete execution of statutory powers. *Moreau* v. *Detchemendy* 522.
2. Under the 38th and 45th sections of the act of 1835, concerning "executions," a sheriff's deed which recited that the land was exposed to sale at the court house door, in the city of St. Louis, during the ——— term of the ——— court of ———, for the year eighteen hundred and forty ——, was held void. *Tanner* v. *Stine*, 580.

SHIPPING.

See BOATS AND VESSELS.

SLAVE.

See DAMAGES, 13.

1. A master who permits his infant slave to remain with its mother during infancy, free from his control, will not be construed to have abandoned his right; nor will the possession of the mother be such adverse possession as is protected by the statute of limitations; nor will the fact that the master permits the mother to receive the benefit of the child's services, after it becomes old enough to render them, in remuneration for her care during its infancy, operate to his disadvantage. *Davis* v. *Evans*, 249.
2. A free negro, under our laws, cannot hold slaves. Per Scott, J. Judges Gamble and Ryland dissenting. *Ib.*

SPANISH LAW.

1. At an executor's sale, in Spanish times, no bidder presenting himself for a common field lot which was subject to a charge for keeping the common fence in repair, the same was by the lieutenant governor transferred to the executor, upon his assuming to bear the charge. *Held*, the transfer was to be regarded as a governmental act, made upon considerations affecting the public, as well as from a regard to the interests of the estate, and did not come within the rule that an executor could not purchase property which it was his duty to administer. *Charleville* v. *Chouteau*, 492.
2. By the Spanish law, which formerly prevailed here, property owned by husband and wife in community might, during the existence of the community, be conveyed by the husband without the consent of his wife. The introduction of the common law, and of laws prescribing the mode in which a married woman might convey her separate property, did not abrogate this right of the husband to dispose of the community property. *Moreau* v. *Detchemendy*, 522.

SPECIFIC PERFORMANCE.

1. A purchaser at a trustee's sale, the terms of which are cash, must pay the money within a reasonable time. If he fails to do so, upon a tender of a deed, a court of equity will not enforce a conveyance, upon a subsequent tender of the amount of his bid. *Heuer* v. *Rutkowski*, 216.

ST. LOUIS.

See LAND COURT.

SUPREME COURT.

See PRACTICE, 1. APPEAL, 1, 2.

1. Where the instructions given fairly present the case to the jury, the judgment will not be reversed, although other instructions, in themselves proper, were refused. *Young* v. *Whtte*, 93.
2. Judgment affirmed, because the record did not show any question of law in relation to evidence, nor any exception to instructions. *Barton* v. *Weatherby*, 103.
3. The supreme court does not review the decisions of inferior courts upon motions for new trials upon the evidence. *Charles* v. *Mitchell*, 106.

ST. LOUIS—(*Continued.*)

Eversole v. *Miller's Administrator*, 120. *Walsh* v. *Warren*, 167. *Presbury* v. *Morris*, 165.

4. Judgment reversed for a defective finding of the facts. *Barbarick* v. *Reed*, 473. *Harper's Adm'r* v. *Phœnix Insurance Co.*, 109.
5. The supreme court will not reverse a civil case because illegal evidence has been permitted to go to the jury, if it is afterwards withdrawn from their consideration by instruction. *Knox* v. *Hunt & Labeaume*, 174.
6. Case affirmed, because there was no bill of exceptions to the action of the court upon motions. *City of St. Louis* v. *Milligan*, 181.
7. To enable the supreme court to review the action of an inferior court upon a motion to strike out portions of a pleading, the record must show the objectionable portions. It is not sufficient that they are merely referred to by line and page of the original. *State, to use of Sly*, v. *Steinman & Lauman*, 201.
8. It is not the practice of the supreme court to award damages upon the affirmance of a judgment, when the case has been appealed without a *supersedeas*. *Haley* v. *Scott*, 202.
9. Where a case is tried by the court without a jury, and no motion for a review is made, the supreme court will not review the finding of facts, but will affirm, if the finding supports the judgment. *Sly* v. *Steinman & Lauman*, 201. *Hughes* v. *Fitzpatrick*, 254.
10. The supreme court presumes that the proceedings below are correct, unless the contrary is shown by the record. *Walter* v. *Cathcart*, 256.
11. A judgment will not be reversed for the giving of instructions abstractly erroneous, unless they affected the verdict. If the evidence is not preserved, so that their bearing can be seen, the judgment will be affirmed. *Ib.*
12. Judgment affirmed upon a review of the facts found by the court below, a case having been made for a review, in accordance with the new practice. *Stagg* v. *Franklin & Fitch*, 299.
13. Where a record purports only to give the substance of the evidence bearing on particular points, the judgment will not be reversed on the ground that there was no evidence upon which to base a particular instruction, unless the evidence bearing on that instruction is stated, or it appears affirmatively that none was given. *Douglass* v. *Stephens*, 362.
14. In a criminal case, the supreme court will not reverse because irrelevant evidence was allowed to go to the jury, if it could not have prejudiced the accused. *State* v. *Jennings*, 435.
15. The supreme court will not interfere with the decisions of inferior courts upon their own rules. *State* v. *Fenly*, 445.
16. Judgment reversed because there was no finding of the facts. *Sloan's Adm'r* v. *Sloan & Wilson*, 474. *Phelps* v. *Relfe*, 479.

SURETY.

See PRINCIPAL AND SURETY, 1, 2, 3. PROMISSORY NOTES, 5, 6.

SURVEY.

See LANDS AND LAND TITLES.

TENANT FOR LIFE.

See REMAINDER AND REVERSION, 1.

TENDER.

1. A tender of articles by a debtor to his creditor, at the time and place specified, will not vest the property in the creditor, so as to discharge the debtor, and relieve him from all further care of the property. He must keep the property ready to be delivered on demand, at the risk, however, of the creditor. To constitute a valid tender, the property to be delivered must be designated and set apart. *McJilton* v. *Smizer*, 111.

TRESPASS.

See PLEADING, 3.

1. The sureties in a bond of indemnity, given to a sheriff to procure the sale under execution of property belonging to a person other than the defendant in the execution, are liable as trespassers. *Wetzell* v. *Waters*, 396.
2. A general finding for the plaintiff, with no finding of the value of the thing injured, destroyed or carried away, will not authorize the court to treble the damages, under the act concerning "trespass," (R. C. 1845.) *Ewing* v. *Leaton*, 17 Mo. Rep., 465, affirmed. *Labeaume* v. *Woolfolk*, 514.

TRIAL OF RIGHT OF PROPERTY.

See EXECUTION, 2, 3.

TROVER.

See ASSIGNMENT, 2, 3. VARIANCE, 2.

TRUSTEE'S SALE.

See SALES, 2.

VARIANCE.

1. The indictment charged that the defendant assaulted "Silas Melville," with intent to kill. The proof was that the name of the person assaulted was "Melvin." *Held*, this was such a variance as that the court should have directed an acquittal. *State* v. *Curran*, 320.
2. The petition stated a case of trover and conversion. The proof was, that the goods were lost by the negligence of the defendant. *Held*, the plaintiff could not recover, without amending his petition. *Duncan's Administrator* v. *Fisher*, 403.

VERDICT.

See PLEADING, 4.

1. One good count in an indictment will support a general verdict, no matter how many defective counts there may be. *State* v. *Jennings*, 435.

WARRANTY.

See DAMAGES, 13.

1. In the sale of a land warrant, there is an implied warranty that it is valid. *Presbury* v. *Morris*, 165.

WITNESSES.

See NOTARY PUBLIC.

WRIT OF ERROR.

1. It is not the practice of the supreme court to award damages upon the affirmance of a judgment, when the case has been appealed without a *supersedeas*. *Haley* v. *Scott*, 202.

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